IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 277 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

BHAVNA PLASTIC PRODUCTS

Appearance:

1. Appeal from Order No. 277 of 2002

Mr. Dave for MR AD OZA for Appellant No.

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/07/2004

ORAL JUDGEMENT

1. This Appeal From Order is filed by the Gujarat Electricity Board (hereinafter referred to as the "GEB") being aggrieved of an order passed by the Civil Judge (S.D.), Dhoraji, below Exh.5 in Special Civil Suit no.12

of 2002 dated 20th March, 2002. The learned Judge was pleased to direct the parties to maintain status quo of the electric connection no.HT 25653 of the plaintiff till the disposal of the suit. This Appeal From Order was admitted on 25th October, 2002 and on that very day, notice as to interim relief returnable on 21st November, 2002 was issued. Thereafter, on 17th March 2004, this Court allowed Civil Application no.4477/2002 and stayed the order passed by the learned Trial Judge below Exh.5 application. The Court, however, ordered that if the present respondent deposits 30% of the disputed supplementary bill within fifteen days from the date of the order, the electric connection shall not be disconnected. The Appeal From order was ordered to be placed for final hearing on 7th April, 2004.

2. Heard the learned Advocates. Mr.Dave the learned Advocate appeared for Mr. A.D.Oza learned advocate for the GEB. The learned Advocate invited the attention of the Court to the facts of the case which are narrated in paragraph 2 of the Appeal Memo which are reproduced for the ready perusal:

> ".....It is submitted that on 5-2-2002 the meter of the plaintiff came to be checked by the squad of the Divisional Office, Dhoraji at the relevant point of time i.e. on 5-2-2002 and it was found that the meter of the consumer is running slow by 29.60%. The meter was checked by the accucheck meter and the aforesaid slowness of 29.60% came to be noted. That the consumer, however, at that point of time demanded that he wants to get his meter tested by the Electrical Inspector and, therefore, the meter was not dislodged and it was kept on the spot in the same condition and Rojkam was prepared to that effect.
>
> 3. It is submitted that on 6-2-2002 i.e. on the immediate day the consumer approached the appellants and gave written request that now he does not want to get his meter tested by the Electrical Inspector and that he is agreeable with the checking of squad carried out on 5-2-2002.
>
> 4. The consumer also requested that his meter may be replaced immediately and on the basis of the slowness of meter whatever procedure is carried out, he will abide by the same. Accordingly, the meter was not referred to the Electrical Inspector as per the request of the

> consumer as there was no dispute with regard to the slowness of meter by the consumer. It is submitted that on 8-2-2002 the Vigilance Squad, Mehsana again checked the meter of the consumer by accucheck meter and it was found that the meter is running slow by 31.03%. At that time also the consumer did not represent that he wants his meter to be tested by the Electrical Inspector. On 9-2-2002 as per the request of the consumer dated 6-2-2002, the meter came to be replaced and the consumer did not object to such replacement. The appellants issued supplementary bill of Rs.4,36,349.93ps. for past six months as per their rules. It is submitted that as an afterthought, after the bill came to be served on 18-2-2002, the consumer raised dispute and contended that he wants his meter to be tested by Electrical Inspector under Section 26(6) of the Indian Electricity Act....."

Mr. Dave learned Advocate submitted that the provisions of subsection (6) of Section 26 of the Indian Electricity Act has no application to the facts of the present case as the respondent had given a go by to the dispute relating to slow running of the meter. He submitted that the learned Judge has committed an error in exercising discretion in favour of the respondent despite the fact that the respondent was blowing hot and cold in the same breath. On 6th February, 2002 by a letter he gave a go-bye to the dispute and declared that he does not want the matter to be referred to the Electrical Inspector. But them on serving of the supplementary bill, the respondent, on 18th February, 2002 raised the dispute and contended that the meter should have been referred to an Electrical Inspector under Section 26(6) of the Indian Electricity Act.

Mr. Dave, learned Advocate strenuously submitted that once having given a go-bye to the dispute, only with a view to see that the amount of supplementary bill is not required to be paid the respondent-original plaintiff has raised the dispute and has filed the suit. He further submitted that, subsection (6) of Section 26 of the Indian Electricity Act, will not be applicable as party has waived the dispute by letter dated 6th February, 2002 as stated hereinabove. He submitted that the order of the learned Judge below Exh.5 is required to be quashed and the respondent is required to be directed to deposit the remaining amount of the supplementary bill as 30% is already deposited.

3. Taking into consideration the provisions of subsection (6) of Section 26 of the Indian Electricity Act, the averments made in the Appeal Memo, and the order passed below Exh.5, this Court is of the opinion that the learned Judge has erred in exercising discretionary power in granting an order of maintaining status quo by both the parties.

The order is hereby quashed and set aside. However, in the interest of justice, the respondent is granted time to deposit the remaining amount of the supplementary bill in three equal installments. The first installment be deposited on or before 16th August, 2004, the second installment be deposited on or before 8th September, 2004, and the third one be deposited on or before 30th September, 2004. If the respondent fails to deposit any of the instalments as directed hereinabove, it will be obligatory on the part of GEB to disconnect the supply.

4. The Appeal From Order is allowed with no order as to costs. Notice is discharged.

(Ravi R.Tripathi,J.)

stanley-rrt.